

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Electronic Delivery of MVPD Communications)	MB Docket No. 17-317
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY.

Verizon supports the Commission’s continued efforts to modernize and streamline its rules to reduce burdens on consumers and providers alike. Today’s consumers communicate more through email than through traditional postal mail. And they gather more information about company practices and services by accessing websites than by opening envelopes and reviewing paper bill inserts. Consistent with today’s consumer preferences, the Commission should authorize Multichannel Video Programming Distributors (MVPDs) to deliver routine subscriber notices electronically. The Commission also should allow MVPDs to post certain generic notices on their websites, and eliminate outdated notice requirements referencing 1990s-era equipment.

Consumer preferences should be the driving force behind the provider-subscriber relationship and notification process. In today’s digital age, most consumers expect to receive electronic notices, not paper. For the limited set of customers who prefer paper notices, they should be allowed make that choice by opting out of email delivery. The Commission’s

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

proposals to modernize and streamline the MVPD notice rules by permitting electronic delivery reflect how the public communicates today. In addition, permitting electronic delivery is more efficient and environmentally friendly.

Electronic delivery should be available when the MVPD has a verified email address on file for the subscriber and the email allows the customer to opt out of electronic delivery for each notice. Because the notices at issue neither concern personal subscriber information nor seek subscriber consent, opt-in approval is not necessary for electronic delivery of any of the notices. The Commission should also ensure that local franchising authorities enforce the same rules for electronic delivery of cable MVPD notices that the Commission adopts in this proceeding.

The Commission can extend the benefits of electronic communications by permitting MVPDs to respond to subscriber complaints or other inquiries by email when the subscriber has used email and/or agreed to email for such communications. Finally, to reduce the reams of paper used and expenses incurred for certified U.S. mail delivery of carriage election notices, the Commission should allow electronic delivery of broadcasters' carriage election notices to an email address which MVPDs establish for that purpose.

II. THE COMMISSION SHOULD PERMIT ELECTRONIC DELIVERY OF MVPD SUBSCRIBER NOTICES.

The Commission has already found that electronic delivery of generic notices to cable TV subscribers “falls squarely” within a “written” information requirement.² “E-mails, by their very nature, convey information in writing.”³ It follows that the Commission should allow cable

² *National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269, ¶ 6 (2017) (“*Cable Notice Declaratory Ruling*”); see *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10,755, ¶ 10 (2017) (“*NPRM*”).

³ *Cable Notice Declaratory Ruling* ¶ 6.

MVPDs to deliver via email the notices required by FCC Rule Sections 76.1601 (deletion or repositioning of broadcast signals), 76.1602 (customer service annual notice), 76.1603 (rate and service changes), 76.1604 (charges for customer service changes), 76.1618 (basic tier availability), 76.1620 (availability of signals), and Section 631 of the Communications Act (privacy policies).⁴

Correspondence by email has become ubiquitous and routine. Electronic delivery will serve the public interest through “the positive environmental aspects of saving substantial amounts of paper annually, increased efficiency and enabling customers to more readily access accurate information regarding their service options.”⁵ Consumers will benefit by the reduction in paper flowing into their homes and by receipt of notices on their computers, which provide electronic storage options.

Legal Authority. The Commission has ample authority under Sections 632(b) and 632(c) of the Communications Act to establish the standards under which cable MVPDs communicate with their subscribers for these Part 76 rules.⁶ While Section 632(b) does not refer to a means for delivery of the notices, Section 632(c) references “any reasonable written means” at the discretion of the operator for delivery of rate and service change notices implemented in Section 76.1603. Given the prevalence of email, Verizon agrees with the Commission’s conclusion that the phrase “any reasonable written means” includes distribution via email to a verified email

⁴ As discussed below, Verizon recommends that the Commission eliminate the notices required by Sections 76.1621 (equipment compatibility offer) and 76.1622 (consumer education on equipment compatibility) in their entirety. If the Commission decides otherwise, any retained notice also should qualify for electronic delivery.

⁵ *Cable Notice Declaratory Ruling* ¶ 6 (footnotes omitted).

⁶ *See id.* ¶ 7; *NPRM* ¶¶ 8-9; 47 U.S.C. §§ 552(b)-(c).

address, and there is nothing in the statute to suggest a different result for Section 632(b) notices.⁷

Verified Email Address. Verizon also agrees that, as applied to electronic delivery, a “reasonable written means” requires delivery to a verified email address for the subscriber, including an email address that the subscriber has provided to the MVPD for communications, an email address that the subscriber regularly uses to communicate with the MVPD, and/or an email address that the subscriber has confirmed as appropriate for delivery of notices.⁸

The Commission should apply these requirements flexibly. For example, the Commission should consider an email address that a consumer has provided when subscribing to or modifying service with the MVPD as an email that the subscriber has provided to the MVPD for communications. In many cases, the subscriber and MVPD may have no need to communicate “regularly.” But once the subscriber has established and maintained service with an email address, that email address should be considered a “verified email address” for the subscriber.

Electronic Links to Notices. Verizon agrees that providing an electronic link to a notice within the email is a reasonable method of delivering the notice itself.⁹ This format reduces the size of the email and allows the customer to decide when to read the notice. The Commission should give MVPDs the option to deliver the actual text by email or to provide an electronic link to the text, which would be maintained online until superseded by a revised notice.

Privacy Policies. The same rules and policies should apply to statements of a cable operator’s privacy policies delivered to subscribers pursuant to Section 631 of the

⁷ See *NPRM* ¶ 10.

⁸ See *id.* ¶ 11.

⁹ See *id.* ¶ 14.

Communications Act. Section 631 requires providers to deliver notice of their privacy practices and policies to subscribers in a “separate, written statement.”¹⁰ While this information may be detailed, it – like the notices discussed above – is generic and concerns no specific subscriber data. Verizon therefore agrees with the Commission’s tentative conclusion that the Commission should apply the same standards for electronic delivery of Part 76 subscriber notices to the Section 631 “written statement” of privacy policies.¹¹

III. THE COMMISSION SHOULD ALLOW SUBSCRIBERS TO OPT OUT OF EMAIL DELIVERY AND RECEIVE PAPER COPIES OF NOTICES.

The Commission has already found that providing “a mechanism for customers to opt out of e-mail delivery and continue to receive paper notices” is sufficient to protect subscribers’ interests while allowing electronic delivery of cable MVPD notices to verified email addresses.¹² It should apply that same rationale for delivery of the Part 76 and privacy notices discussed in the *NPRM*.

An “opt-in” to electronic delivery is not necessary for delivery of the notices required by Sections 16.1603 (rate and service changes), 16.1604 (charges for customer service changes), 16.1618 (basic tier availability), and Section 631 of the Act (privacy).¹³ Like the other notices at issue in the *NPRM*, these notices simply inform the subscriber of available services, policies, and/or actions taken by their service provider. The “nature” of these notices is not any different than the nature of the other notices discussed in the *NPRM*, and should not require opt-in approval for a subscriber.¹⁴

¹⁰ 47 U.S.C. § 551(a)(1).

¹¹ See *NPRM* ¶ 18.

¹² *Cable Notice Declaratory Ruling* ¶ 1.

¹³ See *NPRM* ¶¶ 13, 18.

¹⁴ Cf. *id.* App. A, proposed Rule 76.1600(c) (defining “generic” as “information that applies to subscribers or groups of subscribers generally ... and is not specific to an individual subscriber”).

A uniform “opt-out” mechanism for all these notices benefits consumers with a consistent user experience. They will not have to puzzle over why they may have to opt in to receive some notices electronically while they receive other notices electronically with an opt-out process. A mix-and-match regime does not lend itself to more customer clarity or attention to the notices. It simply breeds confusion and questions that the routine nature of these notices does not warrant. The Commission should adopt a uniform opt-out process for all Part 76 and Section 631 notices to subscribers.

In contrast, the Commission has required “opt-in” approval from subscribers when, for example, it wants consumers to decide whether their personal information can be disclosed to third parties, thereby warranting “informed consent” before the service provider can take that action.¹⁵ But that is not this case. The notices in rule Sections 16.1603, 16.1604, 16.1618, and Section 631 of the Act provide information about an MVPD’s actions and policies that do not include personal information or require any action by the customer before the MVPD implements the action or policy. Like the subscriber annual notice, these notices “are generic in nature and do not contain confidential information specific to an individual subscriber.”¹⁶ There is then no need for “informed consent” from the customer or for the customer to “opt in” to the action or policy. Permitting customers to opt out of electronic delivery is sufficient to ensure that customers can continue to receive paper notices if that is their preference.

¹⁵ See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Information and Other Customer Information*, 22 FCC Rcd 6927, ¶¶ 37-40 (2007) (implementing opt-in approval for carriers’ sharing CPNI with external joint venture partners and independent contractors).

¹⁶ *Cable Notice Declaratory Ruling* at n. 40 (finding opt-in notice is not necessary).

IV. THE COMMISSION SHOULD PROVIDE FLEXIBILITY IN THE OPT-OUT PROCESS.

The Commission suggests that providing a telephone number for subscribers to opt out of receiving electronic notices is “the most universally accessible” mechanism for consumers to express their preference for paper notices.¹⁷ Verizon agrees that a telephone number is a simple way for customers to opt out but recommends that the Commission allow MVPDs some flexibility in obtaining a subscriber’s opt-out request. This flexibility should include automated processes such as interactive voice response systems (IVRs) or voicemail systems to make it easy for customers to complete their opt-out transactions.

As it brings the Part 76 rules into the digital era and in line with consumer preferences, the Commission should allow MVPDs and consumers to rely on digital media to communicate choices. For example, the email delivering a notice could include an electronic hyperlink to a site for consumers to request paper notices. Or the MVPD could establish a “preferences” tab within a subscriber’s online account, in which subscribers – whenever it is convenient but preferably when they sign up for service – could express a preference in one session for receiving each of the required Part 76 and privacy notices either by email or on paper. The latter approach would be more efficient than asking consumers to call in a preference for paper when they receive each Part 76 or privacy notice.

Rather than limit the options available to MVPDs and subscribers, the Commission should provide more flexibility and modify the last sentence of proposed rule Section 76.1600(d) to read:

¹⁷ See *NPRM* ¶ 12 (quoting *Cable Notice Declaratory Ruling* ¶ 10).

§ 76.1600 Electronic delivery of notices.

....

(d) ... The MVPD must provide an effective mechanism, such as but not limited to:

- (1) An opt-out telephone number,
- (2) An electronic link that allows subscribers to identify their preferences electronically, or
- (3) Directions to an online site within which subscribers can identify their preferences.

Incorporating flexibility into the processes available to obtain subscriber opt-outs ensures that the new notice rules will not immediately become as outdated as the existing paper notice rules.

V. THE COMMISSION SHOULD ALLOW MVPDS TO POST CERTAIN NOTICES ON WEBSITES AND/OR IN ELECTRONIC MESSAGE CENTERS RATHER THAN SENDING THEM TO SUBSCRIBERS.

The Commission should expressly authorize MVPDs to post the notices required by Sections 76.1602 (annual notice) and 76.1618 (basic tier availability) on their websites and/or in electronic message centers readily accessible to subscribers.¹⁸ Both these notices contain generic information about an operator's services and policies that do not change significantly from year to year. While subscribers may find this information useful, the information would actually be more useful if it is readily available to the subscriber rather than delivered once a year.

The Commission has already found – in the context of online public files for broadcasters and MVPDs – that “the public benefits of posting ... information online, while difficult to quantify with exactitude, are unquestionably substantial.”¹⁹

By taking advantage of the efficiencies made possible by digital technology, we will make information that cable, DBS, and broadcast and satellite radio licensees are already required to make publicly available more accessible while also reducing costs both for the government and the private sector. The Internet is an

¹⁸ See *id.* ¶ 16.

¹⁹ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526, ¶ 15 (2016).

effective, low-cost means of maintaining contact with, and distributing information to, viewers and listeners. Placing the public file online will permit 24-hour access from any location, thereby improving access to information about how cable, satellite, broadcast radio, and SDARS entities are serving their communities and meeting their public interest obligations.²⁰

The same benefits and reasoning apply with equal force to posting generic MVPD service and policy information online.

The Commission should avoid overly prescriptive requirements for how this information is presented online, other than that it should be readily available and easily findable on the MVPD's principal website. MVPDs architect their Internet sites in unique ways to attract and inform interested consumers and existing subscribers. Moreover, some of the information in Sections 76.1602 and 76.1618 may be directed toward specific franchise areas and communities, requiring entry of additional information by the website visitor (*e.g.*, a zip code) before viewing. The Commission should allow MVPDs to make this information available in a manner consistent with the design of the website and any necessary interaction between the site and individual consumer.

In addition to the Verizon website, Fios subscribers have access to an electronic message center through their in-home equipment. Subscribers can access messages posted in the message center on their TV receivers, and the messages remain available until updated. While website posting is readily accessible, the message center allows subscribers to review messages on the same equipment they use to watch the video programming to which the notices may apply.

If the Commission adopts electronic posting as the means of complying with Sections 76.1602 and 76.1618, it should eliminate any requirement to deliver these notices directly to consumers by any means after the MVPD has posted the information online. As the Commission

²⁰ *Id.*

explained with respect to online public files: “The Internet is an effective, low-cost means of maintaining contact with, and distributing information to, viewers and listeners....permit[ting] 24-hour access from any location, thereby improving access to [the] information.”²¹ There is no further need for the MVPD to deliver the same information electronically or on paper to individual subscribers.

VI. THE COMMISSION SHOULD ALLOW MVPDS TO RESPOND BY EMAIL TO CUSTOMER COMPLAINTS AND INQUIRIES SENT BY EMAIL.

The Commission should adopt its proposal to allow MVPDs to respond by email to consumer complaints and inquiries when the consumer uses email, or agrees to use email, to communicate with the MVPD.²² The Commission has already determined that use of email for communications about actions of regulated entities is permissible, for example, in formal complaint proceedings.²³ Given the prevalence and acceptance of email, the Commission should allow MVPDs to communicate with subscribers by email when the subscriber has already demonstrated a preference for email communications.

VII. THE COMMISSION SHOULD ELIMINATE THE NOTICE REQUIREMENTS IN SECTIONS 76.1621 AND 76.1622.

The Commission should eliminate Sections 76.1621 and 76.1622. These rules require notices to subscribers of compatibility between cable systems and TV receiver and video recording equipment from 1992 – pre-DTV, pre-digital cable systems, pre-CABLECARD, pre-DVR, and pre-video apps – in other words, prehistoric from the standpoint of 2018.²⁴

²¹ *Id.*

²² *See NPRM* ¶ 19.

²³ 47 C.F.R. § 1.735(f).

²⁴ *See Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, First Report and Order, 9 FCC Rcd 1981 (1994).

The Commission concedes that it should simply delete Section 76.1621 as no longer relevant to cable MVPDs and subscribers, given today’s digital technologies.²⁵ The implementing statute for Section 76.1621 – Section 624A of the Act – gives the Commission authority to retire the rule since it requires the Commission to review and modify these regulations “to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.”²⁶

Section 76.1622 should face the same fate. Again, the rule requires cable operators to educate consumers about 1992 technology. Today, MVPDs post information about their services and compatible equipment on their websites. If consumers have specific questions, there are online “support” pages, FAQs, online instructional videos and user guides, and, of course, telephone help lines. While on-paper consumer education programs may have been useful to promote the spread of cable TV services prior to ubiquitous Internet access, this proceeding illustrates that these programs do not reflect how today’s consumers learn about a provider’s services and equipment. The Commission should retire Section 76.1622 “to reflect improvements and changes in cable systems” and their customers.

VIII. THE COMMISSION SHOULD ENSURE THAT LOCAL FRANCHISING AUTHORITIES APPLY THE COMMISSION’S ELECTRONIC DELIVERY NOTICE RULES.

The Commission can achieve all the benefits of electronic delivery of cable subscriber notices only if it ensures that state and local franchising authorities (LFAs) apply the same rules to their franchisees. Sections 16.1602 and 16.1603 specifically allow LFAs to enforce the customer service standards in those rules, and LFAs may – in franchise agreements – impose specific standards for delivery of notices to subscribers based on paper delivery. If LFAs require

²⁵ *NPRM* ¶ 22.

²⁶ 47 U.S.C. § 544a(d).

franchisees to continue paper delivery, after the Commission has authorized electronic delivery, or if LFAs impose more restrictive standards for what constitutes a “verified email address,” the benefits the Commission seeks to realize in modernizing its regulations would be lost.

Section 624(a) of the Communications Act states that an LFA “may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.”²⁷ Section 632 authorizes the Commission to adopt the subscriber notices in Part 76 and for LFAs to enforce them. If the Commission permits electronic delivery of subscriber notices to verified email addresses, it should also find that LFAs can enforce delivery of such notices consistent with the Commission’s new electronic delivery rules. However LFAs should be barred from requiring paper delivery or imposing more stringent requirements for electronic delivery that are inconsistent with the regulations adopted by the Commission under Title VI in this proceeding.

The Commission’s goals in this proceeding are to modernize MVPD-to-subscriber notice regulations, establish standards for efficient communications between MVPDs and their subscribers, and reduce costs and regulatory burdens for participants in the video delivery marketplace. If state and local franchising authorities effectively require retention of paper delivery, those restrictions would detract from the efficiency and uniformity that the Commission seeks to promote through electronic delivery and thereby would “conflict with or stand as an obstacle to the accomplishment of federal objectives.”²⁸ The Commission should make clear that

²⁷ 47 U.S.C. § 544(a).

²⁸ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, ¶ 130 (2007).

LFAs may not enforce inconsistent or more stringent requirements for MVPD communications with their subscribers than those adopted in this proceeding.

IX. THE COMMISSION SHOULD AUTHORIZE BROADCASTERS TO DELIVER CARRIAGE ELECTION NOTICES TO AN EMAIL ADDRESS DESIGNATED FOR SUCH PURPOSE BY INDIVIDUAL MVPDS.

Every three years, Verizon receives hundreds of carriage election notices by certified mail. Verizon may receive two, three, or more notices from the same broadcast station because Verizon carries the station in multiple cable systems and franchise areas. The broadcast industry obviously incurs significant costs both in postage and paper products because of the requirement to deliver to cable systems their carriage election notices by certified mail.²⁹

Modernizing this process through the use of electronic delivery is consistent with the Commission's goals in this proceeding. But as the Commission notes, "significant legal and financial consequences arise from the failure to make a timely election notice,"³⁰ or to follow strictly the Commission's rules for delivery of carriage election notices.³¹ The Commission should therefore seek consensus from the broadcast and MVPD industries to reduce the potential harm that could result from systemic failures in the delivery mechanics.

Verizon recommends that the Commission allow – as at least one alternative delivery mechanism – MVPDs to establish an Internet-based email address specifically to receive broadcasters' carriage election notices. MVPDs would have to post that address prominently on their websites and may also provide a hyperlink to the email box. The Commission could also

²⁹ See 47 C.F.R. § 76.64(h).

³⁰ *NPRM* ¶ 26.

³¹ See *Minority Television Project v. DISH Network*, Memorandum Opinion and Order, DA 18-63, ¶ 4 (MB rel. Jan. 23, 2018) ("We conclude that the rejection [of mandatory carriage] was permissible under our rules because KMTP did not adhere to the Commission's clear and express procedural requirements regarding the manner in which carriage elections must be sent.")

require that the MVPD send an automatic return receipt email to any broadcaster using the email address as a record of the date and time of receipt.

For example, Verizon could post an email address entitled “Fios Carriage Election Notices” for receipt of carriage election notices up to 60 days prior to the deadline for receipt of such notices. Broadcasters choosing to use electronic delivery would be able to retain a “sent” copy of their email as the record of the date and time sent and would also receive a reply email, acknowledging delivery.

While the Commission, broadcasters, and MVPDs may want to permit more than one method to deliver carriage election notices, the Commission should adopt at least one method that relies on electronic delivery for those parties willing to give up reliance on paper copies and certified mail. Consistent with the Commission’s Media Modernization Initiative, adopting an electronic delivery alternative provides a more environmentally-friendly and efficient mechanism and moves this process into the 21st Century.

X. CONCLUSION.

For the reasons set forth above, the Commission should adopt electronic delivery mechanisms for MVPDs’ subscriber notices, MVPDs’ routine communications with consumers, and broadcasters’ carriage election notices.

Respectfully submitted,

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